

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: THURSDAY
DATE: FEBRUARY 25, 2016
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [15-12202](#)-A-13 ALICE BURTON MOTION TO DISMISS CASE
MHM-1 1-8-16 [[21](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [15-10004](#)-A-13 LARRY VALENCIA MOTION TO MODIFY PLAN
TCS-4 1-11-16 [[70](#)]
LARRY VALENCIA/MV
TIMOTHY SPRINGER/Atty. for dbt.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

3. [15-14704](#)-A-13 CARLIE MEDINA CONTINUED HEARING RE: PLAN
ROBERT WILLIAMS/Atty. for dbt. 12-3-15 [[5](#)]

Final Ruling

Matter: Confirmation of Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Plan Confirmed

Order: Prepared by the trustee, approved by debtor's counsel

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994).

The plan confirmation hearing was originally set for February 3, 2016. The court's civil minutes from that hearing indicate that a signed, original plan needed to be filed as of this continued hearing. That plan was filed and is signed. The court will approve confirmation of the plan.

4. [11-13106](#)-A-13 JORGE TORO AND LIDIA VERDUZCO MOTION TO DISMISS CASE
MHM-4 1-6-16 [[120](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [14-15606](#)-A-13 MARK/RISE MARTIN MOTION TO DISMISS CASE
MHM-1 1-7-16 [[54](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$24,678.40.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$24,678.40. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

6. 15-14906 -A-12 VICTOR/EVILA NAJERA BHT-1 U.S. BANK NATIONAL ASSOCIATION/MV ANTHONY EGBASE/Atty. for dbt. BRIAN TRAN/Atty. for mv. RESPONSIVE PLEADING	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-14-16 [20]
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Tentative Ruling

Motion: Stay Relief
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Civil minute order

Subject: 3463 East Mountain View, Selma, California 93662

Creditor U.S. Bank moves for stay relief after having foreclosed pre-petition on 3463 East Mountain View, Selma, California 93662, and having obtained a writ of possession following an unlawful detainer action. The debtor opposes relief.

STAY RELIEF

Section 362(d)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure in June 2014. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The motion will be granted. The movant may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property. Another species of cause also exists. This is the debtor's second bankruptcy post-foreclosure. While the stay was extended, that is without prejudice to creditor's rights to seek stay relief.

Moreover, recent Ninth Circuit case law (arising in the context of leases) makes clear that the issuance of a writ of possession cuts off all of the debtors' interests.

"[W]hether [a debtor who had been a lessee] had actual possession of the property when he filed for bankruptcy has no bearing on whether he had a cognizable possessory interest in the property." *Eden Place v. Perl (In re Perl)*, No. 14-60039, 2016 WL 142453, at *5 (9th Cir. Jan. 8, 2016). Thus, whether the debtors actually remain in possession

does not determine whether he has a legal or equitable interest that remains property of the estate here.

More specifically to this case, the Ninth Circuit held that "under California law, entry of judgment and a writ of possession following unlawful detainer proceedings extinguishes all other legal and equitable possessory interests in the real property at issue." Id. In Perl, the court found that no stay violation occurred by Eden Place, LLC's executing of a writ of possession on the property against Perl because the debtor had no remaining interest in the property subject to the writ of execution when the bankruptcy case had been filed. The court reasoned that:

The unlawful detainer judgment and writ of possession entered pursuant to California Code Civil Procedure § 415.46 bestowed legal title and all rights of possession upon Eden Place. Thus, at the time of the filing of the bankruptcy petition, Perl had been completely divested of all legal and equitable possessory rights that would otherwise be protected by the automatic stay" Id. at *7 (citation omitted).

Here, foreclosure occurred pre-petition and, on December 18, 2015, US Bank obtained a Writ of Possession. Thereafter, on December 23, 2015, the debtors filed the instant bankruptcy.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

U.S. Bank's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 3463 East Mountain View, Selma, California 93662, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

7. [10-11810](#)-A-13 RICHARD/TAMARA JACKSON MOTION TO DISMISS CASE
MHM-1 1-20-16 [[88](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
STIPULATED ORDER, ECF NO. 96

Final Ruling

The motion withdrawn by stipulated order, the matter is dropped as moot.

8. [10-11810](#)-A-13 RICHARD/TAMARA JACKSON MOTION TO DISMISS CASE
USA-1 1-21-16 [[92](#)]
INTERNAL REVENUE SERVICE/MV
DAVID JENKINS/Atty. for dbt.
JEFFREY LODGE/Atty. for mv.
STIPULATED ORDER, ECF NO. 96

Final Ruling

This matter has been resolved by stipulation and accordingly will be dropped from calendar. If the stipulation fails, however, because the debtors have not made the required payment pursuant to paragraph 1 of the stipulation, the motion (USA-1) may be re-noticed for hearing pursuant to LBR 9014-1(f)(1) by filing a new notice of hearing and serving that notice on debtors and the trustee.

9. [15-14711](#)-A-13 ANDREA SOUSA MOTION TO DISMISS CASE
MHM-1 1-22-16 [[37](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

10. [15-14811](#)-A-13 RUBEN/KARIMA PARKS
APN-1
CAPITAL ONE AUTO FINANCE/MV

OBJECTION TO CONFIRMATION OF
PLAN BY CAPITAL ONE AUTO
FINANCE
1-5-16 [[14](#)]

JOEL WINTER/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Sustained in part (plan confirmation denied), overruled
as moot in part

Order: Civil minute order

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

UNDERSTATEMENT OF SECURED CLAIM AMOUNT

The objection will be overruled because any understatement of the amount of the creditor's claim (or arrearage claim) in the plan does not alter the creditor's rights. Section 2.04 of the plan provides that the proof of claim, not the plan, controls the amount and classification of the creditor's claim unless the claim amount or classification is otherwise altered by the court after ruling on one of the three types of matters listed in the section.

INTEREST RATE

The plan provides for a 0% interest rate on Capital One Auto Finance's secured claim. This interest rate does not comply with *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). The court in *Till* held that the "prime-plus or formula rate best comports with the purposes of the Bankruptcy Code." *Till v. SCS Credit Corp.*, 541 U.S. at 480.

The court further found that "[i]t is sufficient for our purposes to note that, under 11 U.S.C. § 1325(a)(6), a court may not approve a plan unless, after considering all creditors' objections and receiving the advice of the trustee, the judge is persuaded that 'the debtor will be able to make all payments under the plan and to comply with the plan.' Together with the cramdown provision, this requirement obligates the court to select a rate high enough to compensate the creditor for its risk but not so high as to doom the plan. If the court determines that the likelihood of default is so high as to necessitate an 'eye-popping' interest rate, the plan probably should not be confirmed." *Id.* (citations omitted).

Here, the plan provides for an interest rate of 0%. The court takes judicial notice of the prime rate of interest as published in a leading newspaper. *Bonds, Rates & Credit Markets: Consumer Money Rates*, Wall St. J., Feb. 19, 2016, http://online.wsj.com/mdc/public/page/mdc_bonds.html (last visited Feb. 22, 2016). Given that the interest rate provided in the plan is below the prime rate of interest, the plan is not confirmable over the objection of Capital One Auto Finance. The interest rate should have

been at least 4.5% to 5.0% given the current prime rate of 3.5% plus an upward adjustment for the risk of default.

75 DAY ORDER

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Capital One Auto Finance's objection to confirmation has been presented to the court. Having reviewed the papers and evidence filed in support and opposition to the objection and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the objection is sustained in part and overruled in part. The objection is sustained on the ground that the interest rate is insufficient. The objection is overruled to the extent it is directed at the plan's understatement of Capital One Auto Finance's secured claim. The court denies confirmation of the plan.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

11. [13-17712](#)-A-13 RUBEN OLVERA AND GLORIA
MHM-2 CHAVEZ
MICHAEL MEYER/MV
MOTION TO DISMISS CASE AND/OR
MOTION TO RECONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
1-26-16 [[201](#)]

THOMAS GILLIS/Atty. for dbt.
MICHAEL MEYER/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

12. [13-17712](#)-A-13 RUBEN OLVERA AND GLORIA
SAS-2 CHAVEZ
SHERYL STRAIN/MV
CONTINUED MOTION FOR
COMPENSATION FOR SHERYL A.
STRAIN, CHAPTER 7 TRUSTEE(S)
9-8-15 [[123](#)]

THOMAS GILLIS/Atty. for dbt.
PETER FEAR/Atty. for mv.

No tentative ruling.

13. [13-17712](#)-A-13 RUBEN OLVERA AND GLORIA MOTION TO CONFIRM PLAN
TOG-13 CHAVEZ 1-14-16 [[196](#)]
RUBEN OLVERA/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

14. [15-14512](#)-A-13 MARY JAURIQUE MOTION TO DISMISS CASE
MHM-1 1-20-16 [[25](#)]
MICHAEL MEYER/MV
JANINE ESQUIVEL/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$540. Cause also exists because the debtor has failed to file, prior to the first meeting of creditors, all federal and state tax returns for the taxable periods ending during the 4 years prior to the petition date, 2011, 2012, 2013, and 2014. §§ 1307(e), 1308(a).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the proposed chapter 13 plan in this case. The court hereby

dismisses this case.

15. [11-17015](#)-A-13 LARRY/ANNIE ANDERSON MOTION TO DISMISS CASE
MHM-3 1-6-16 [[167](#)]
MICHAEL MEYER/MV
M. ENMARK/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [14-12915](#)-A-13 JEANETTE TENA CONTINUED MOTION TO DISMISS
MHM-2 CASE
MICHAEL MEYER/MV 11-23-15 [[67](#)]
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

17. [14-12915](#)-A-13 JEANETTE TENA MOTION TO MODIFY PLAN
TCS-3 1-13-16 [[73](#)]
JEANETTE TENA/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

18. [14-13016](#)-A-13 ANTHONY/VIRGINIA GONZALES MOTION TO DISMISS CASE
MHM-2 1-7-16 [[42](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

19. [15-12317](#)-A-13 MIRIAM INIGUEZ

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-3-16 [[58](#)]

MARCUS TORIGIAN/Atty. for dbt.

Tentative Ruling

If the \$335 filing fee has not been paid in full by the time of the hearing, the case will be dismissed without further notice or hearing.

20. [15-14121](#)-A-13 JONATHAN MEEKER
MHM-1
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
1-25-16 [[24](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

21. [15-14121](#)-A-13 JONATHAN MEEKER
MHM-2

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
1-29-16 [[28](#)]

DAVID JENKINS/Atty. for dbt.

No tentative ruling.

22. [15-10123](#)-A-13 CURTIS ALLEN AND
MHM-2 CHARLOTTE JACKSON
MICHAEL MEYER/MV

MOTION FOR AN ORDER TO SHOW
CAUSE FOR DEBTORS' COUNSEL TO
APPEAR AND BE HEARD
1-25-16 [[34](#)]

VARDUHI PETROSYAN/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The court having addressed the issue in the Order Continuing Hearing on Chapter 13 Trustee's Motion to Dismiss, filed January 16, 2016, ECF # 28, the matter is dropped as moot.

23. [16-10323](#)-A-13 JOHN/DESIREE STUHAAN MOTION TO EXTEND AUTOMATIC STAY
SL-1 2-11-16 [[12](#)]
JOHN STUHAAN/MV
SCOTT LYONS/Atty. for dbt.

Tentative Ruling

Motion: Extend the Automatic Stay

Notice: LBR 9014-1(f) (2); no written opposition required

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c) (3) (B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

24. [13-14824](#)-A-13 ALBERT/DEE ANNA KNAUER MOTION FOR RELIEF FROM
BMJ-1 AUTOMATIC STAY
COMM 2006-C8 SHAW AVENUE 2-11-16 [[24](#)]
CLOVIS/MV
TIMOTHY SPRINGER/Atty. for dbt.
JOHN MICHAEL/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f) (2); no written opposition required

Disposition: Denied in part as moot (stay relief), denied in part without prejudice (allowance of administrative expenses)

Order: Civil minute order

Subject: A commercial lease of the following premises: Space TS5-109 (1500 square feet of floor area in building TS-9) at 1250 Shaw Avenue, Suite 109, Clovis, CA, 93612

STAY RELIEF

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the moving party's unexpired lease claim in section 3. Section 3.02 of the confirmed Chapter 13 Plan provides that "[u]pon confirmation of the plan, all bankruptcy stays are modified to allow the nondebtor party to an unexpired lease to obtain possession of a leased property, to dispose of it under applicable law, and to exercise its rights against any nondebtor in the event of a default under applicable law or contract."

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights to obtain possession of the leased property and to dispose of it under applicable law. Therefore, no effective relief can be awarded on the movant's request for stay relief. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its lease. The stay relief motion will be denied as moot.

ALLOWANCE OF ADMINISTRATIVE EXPENSES

Local Rule 9014-1(d)(1) does not permit the joinder of distinct requests for relief. Here, the request for allowance of administrative expenses has been improperly joined to the motion for relief from automatic stay. See Fed. R. Bankr. P. 9014(c), 7018.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

COMM 2006-C8 SHAW AVENUE CLOVIS D/B/A SIERRA VISTA MALL has filed a motion for relief from the automatic stay. Having reviewed the papers and evidence filed in support and opposition to the motion and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied in part as moot to the extent it seeks relief from the automatic stay to allow the movant-lessor to exercise its rights and remedies as to its interest in a commercial lease of premises described as: Space TS5-109 (1500 square feet of floor area in building TS-9) at 1250 Shaw Avenue, Suite 109, Clovis, CA, 93612.

IT IS FURTHER ORDERED that the motion is denied in part without prejudice as to the movant's request for allowance of administrative expenses. The motion was improperly joined to a separate and distinct request for relief.

25. [12-12825](#)-A-13 ROBERT/MARGARITA RAMIREZ MOTION TO DISMISS CASE
MHM-1 1-6-16 [[34](#)]
MICHAEL MEYER/MV
GARY HUSS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

26. [13-12828](#)-A-13 MARTIN CERDA AND MONICA OBJECTION TO CLAIM OF WELLS
DRJ-3 GARZA FARGO BANK N.A., CLAIM NUMBER 8
MARTIN CERDA/MV 1-7-16 [[71](#)]
DAVID JENKINS/Atty. for dbt.
VACATED, ORDER ECF NO. 78

Final Ruling

The parties have resolved the matter by stipulation. The matter will be dropped from calendar as moot.

27. [15-13604](#)-A-13 MARIO/DIANA PEREZ CONTINUED MOTION FOR SANCTIONS
PBB-2 FOR VIOLATION OF THE AUTOMATIC
MARIO PEREZ/MV STAY
11-6-15 [[76](#)]
PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

At the request of the moving party, the matter is dropped from calendar.

28. [15-14230](#)-A-13 ALVARO HERNANDEZ AND
JAA-1 GISELLE MARTINEZ
OCWEN LOAN SERVICING, LLC/MV
OBJECTION TO CONFIRMATION OF
PLAN BY OCWEN LOAN SERVICING,
LLC
1-20-16 [[48](#)]

PETER BUNTING/Atty. for dbt.
JESSICA ABDOLLAHI/Atty. for mv.
RESPONSIVE PLEADING

*[The hearing on this matter will follow the hearing on the trustee's
objection to confirmation in this case having docket control no. MHM-
1]*

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Overruled as moot

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The objection was filed one day late. LBR 3015-1(c)(4). The court generally adheres to this deadline, but the debtor has not raised it. The objection will be overruled as moot, however, because the trustee's objection to confirmation will be sustained.

29. [15-14230](#)-A-13 ALVARO HERNANDEZ AND
KEH-1 GISELLE MARTINEZ
BALBOA THRIFT AND LOAN/MV
CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY BALBOA
THRIFT AND LOAN
12-15-15 [[27](#)]

PETER BUNTING/Atty. for dbt.
KEITH HERRON/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

The court believes the stipulation resolving the debtors' motion to value collateral of Balboa Thrift & Loan also resolves this objection to confirmation. Accordingly, the court will overrule the objection to confirmation as moot.

30. [15-14230](#)-A-13 ALVARO HERNANDEZ AND
MHM-1 GISELLE MARTINEZ

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
1-15-16 [[42](#)]

PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Sustained

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

CURE OF PREPETITION DEFAULT

The trustee objects on the grounds that the plan proposes to commence payments to the Class 1 arrears in month 18 of the plan. The trustee argues that this does not constitute curing a default within a reasonable time as required by § 1322(b)(5). The court agrees.

"The Code does not shed light on what constitutes a 'reasonable time.' Case law has stated that the reasonable time to cure defaults under § 1322(b)(5) is a flexible concept, determined on a case-by-case basis, and is within the sound discretion of the trial court." *In re Martin*, 156 B.R. 47, 50 (B.A.P. 9th Cir. 1993) (citing cases). The BAP in this circuit has held invalid a local rule requiring cure of prepetition defaults within 15 days in certain cases in which the debtor had a prior bankruptcy case pending within the 6-month period before the petition. *In re Steinacher*, 283 B.R. 768 (B.A.P. 9th Cir. 2002). The court held that "[t]he rule impermissibly force[d] all debtors who had cases pending in the six months prior to the petition date to cure specified pre-petition defaults within 15 days of their Chapter 13 petition dates, rather than within the 'reasonable time' provided by statute." *In re Steinacher*, 283 B.R. 768, 773 (B.A.P. 9th Cir. 2002).

This court acknowledges that "a reasonable time" for cure is a flexible concept and that the determination is within its sound discretion and should be made on a case-by-case basis. In this case, the court exercises its discretion to determine whether the cure proposed constitutes a cure within a reasonable time.

Debtor's plan cures the default on the Class 1 mortgage claim by making 37 payments beginning in the 18th month. The arrearage is \$8500. Although a plan's statutory duration constitutes the outside boundary for the time within a cure must occur, not every cure proposed within a plan's duration is necessarily reasonable, such as when the cure payments do not commence until a significant amount of time has passed. By contrast, many plans may provide for a cure of a default over a 60-month plan term, and this may be a reasonable time provided that cure payments begin promptly.

Here, the debtors' waiting 18 months to commence making cure payments on an arrearage does not constitute cure within a reasonable time. § 1322(b)(5). The secured creditor is forced to wait 1.5 years before receiving any payment towards curing the default on its secured loan. The creditor endures the risk during this time that the plan may fail without it receiving a single payment on the arrearage. Commencing a cure payment 1.5 years into the plan's period is not a cure within a reasonable time even if the cure takes place over 37 months once it does commence.

75-DAY BAR DATE

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's declaration without further notice or hearing. See 11 U.S.C. § 1307(c)(1).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

The chapter 13 trustee's objection to confirmation has been presented to the court. Having reviewed the papers and evidence filed in support and opposition to the objection and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the objection is sustained. Confirmation will be denied without prejudice.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's declaration without further notice or hearing.

31. [15-14730](#)-A-13 PATRICIA SIMONIAN
ASW-1
LAKEVIEW LOAN SERVICING LLC/MV

OBJECTION TO CONFIRMATION OF
PLAN BY LAKEVIEW LOAN SERVICING
LLC
2-2-16 [[13](#)]

GABRIEL WADDELL/Atty. for dbt.
DANIEL FUJIMOTO/Atty. for mv.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Overruled

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Creditor Lakeview Loan Servicing LLC, servicer for M&T Bank, has objected to confirmation on grounds that the debtor's plan contains an understatement of its prepetition arrearage. It also objects because the plan contains a modification of its rights by fixing the postpetition payment at \$0.00 when the current monthly payment is \$1485.77.

But the plan itself resolves this problem. The objection will be overruled because any understatement of the amount of the creditor's claim (or arrearage claim) in the plan does not alter the creditor's rights. Section 2.04 of the plan provides that the proof of claim, not the plan, controls the amount and classification of the creditor's claim unless the claim amount or classification is otherwise altered by the court after ruling on one of the three types of matters listed in the section. In addition, pursuant to section 2.11 of the plan, the creditor has stay relief as of confirmation to exercise its rights and remedies against its collateral in the event of a default because its claim has been classified as a Class 4 claim. The creditor's rights will not be altered by confirming the plan over this objection.

32. [15-11231](#)-A-13 ISIAH/JENNIFER ISLAS MOTION TO DISMISS CASE
MHM-1 1-8-16 [[62](#)]
MICHAEL MEYER/MV
ANDY WARSHAW/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$7805.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$7805. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

33. [15-14831](#)-A-13 RAMONE HYDE AND LAKQUISHA HARDAWAY-HYDE
U.S. BANK NATIONAL ASSOCIATION/MV
DAVID JENKINS/Atty. for dbt.
BRIAN TRAN/Atty. for mv. OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK NATIONAL
ASSOCIATION
1-28-16 [[17](#)]

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Overruled as moot

Order: Civil minute order

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

UNDERSTATEMENT OF ARREARAGE

The objection will be overruled on this ground because any understatement of the amount of the creditor's claim (or arrearage claim) in the plan does not alter the creditor's rights. Section 2.04 of the plan provides that the proof of claim, not the plan, controls the amount and classification of the creditor's claim unless the claim amount or classification is otherwise altered by the court after ruling on one of the three types of matters listed in the section.

FEASIBILITY

The objection states that \$59.78 per month would be required to provide for the correct total arrearage over the 36-month term. The secured creditor indirectly raises feasibility by a reference to § 1325(a)(6). But this ground has not been stated with particularity.

The court notes that the debtors' net income on Schedule J is \$250. The plan payment is also \$250. The secured creditor's claim at issue is a Class 4 claim, which is paid directly by the creditor outside the plan. As compared to the debtors' gross income from Schedule I (\$5955.14) and to their total monthly expenses from Schedule J, the monthly arrearage amount is insignificant: it is only 1% of the debtors' monthly gross income and 1% of the debtors' monthly expenses. This difference between stated expenses on Schedule J and actual expenses (which would include the arrearage asserted by creditor and not stated in the plan) does not render the plan infeasible.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Secured creditor U.S. Bank National Association, as Indenture Trustee, has presented its objection to confirmation to the court. Having reviewed the papers and evidence filed in support and opposition to the objection, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the objection is overruled.

34. [12-60233](#)-A-13 TREVOR HOOD MOTION TO MODIFY PLAN
DRJ-3 1-21-16 [[53](#)]
TREVOR HOOD/MV
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

35. [13-16633](#)-A-13 FERNANDO ARROYO AND MOTION TO DISMISS CASE
MHM-2 ELIZABETH BROERS 1-7-16 [[53](#)]
MICHAEL MEYER/MV
GARY HUSS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

36. [15-13934](#)-A-13 KCLASS/BARBARA DENHEYER MOTION FOR AN ORDER TO SHOW
MHM-2 CAUSE FOR DEBTORS' COUNSEL TO
MICHAEL MEYER/MV APPEAR AND BE HEARD
1-25-16 [[50](#)]
LAUREN RODE/Atty. for dbt.

Final Ruling

An Order to Show Cause, filed February 2, 2016, ECF # 54, having issued and a hearing date scheduled for March 10, 2016, the matter is dropped as moot.

37. [15-14134](#)-A-13 CARLOS/LUZ DELGADO
MHM-2
MICHAEL MEYER/MV
PIERRE BASMAJI/Atty. for dbt.

MOTION TO DISMISS CASE
1-22-16 [[69](#)]

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The debtor has failed to set a plan for hearing with notice to creditors. This case has been pending for more than 120 days (or approx. 4 months). The original plan was filed 10/22/15. Two amended plans have since been filed, but neither has been set for hearing pursuant to the court's local rules. LBR 3015-1(d). For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted for unreasonable delay by the debtor in confirming a plan that is prejudicial to creditors. The court hereby dismisses this case.

38. [15-13935](#)-A-13 RANDALL/SHARI WARKENTIN
MHM-2
JERRY LOWE/Atty. for dbt.
WITHDRAWN
- OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
1-29-16 [[48](#)]

Final Ruling

The objection withdrawn, the matter is dropped as moot.

39. [15-13238](#)-A-13 TODD/MINDY MACIEL
FLG-2
TODD MACIEL/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING
- CONTINUED MOTION TO VALUE
COLLATERAL OF GATEWAY ONE
LENDING & FINANCE, LLC
12-8-15 [[28](#)]

Tentative Ruling

Motion: Value Collateral

Notice: LBR 9014-1(f)(1); written opposition filed and withdrawn
pursuant to stipulation

Disposition: Granted

Order: Civil minute order

The debtors request a valuation of the collateral securing respondent creditor Gateway One Lending & Finance, LLC. The collateral is a 2013 Ford F-150 SuperCrew Cab XLT pickup. A portion of the debt secured by the vehicle is not purchase money debt: this non-purchase money portion is debt that resulted from financing the negative equity (the secured debt in excess of the vehicle's value) on the vehicle that the debtor traded in for the vehicle that is now the respondent's collateral.

The motion was originally opposed by the respondent but the debtors' counsel's status report has indicated that the opposition will be withdrawn pursuant to an agreement between the parties.

REBATE

The court will treat the manufacturer's rebate as reducing the overall amount of the claim, including both the PMSI portion of the claim and the negative equity portion. A rebate is "[a] return of part of a payment, serving as a discount or reduction." *Black's Law Dictionary* 1273 (7th ed. 1999). The court considers the "payment" to be the total amount paid by the debtor even though such amount was financed. A return of this payment, the rebate, reasonably reduces the total amount of the financing, including both the PMSI portion and the negative equity portion of the payment.

The total amount of the present claim is \$37,632.19. The negative equity portion of this claim will be calculated below by multiplying the ratio of the negative equity financing to the total financing by the present claim amount (which total claim amount should reflect a reduction based on the manufacturer's rebate).

DETERMINATION OF THE PMSI-PORTION OF CLAIM FOR VALUATION PURPOSES

Legal Standards

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

Analysis

Here, the debtor does not argue that the vehicle is collateral outside the scope of the hanging paragraph. Instead, the debtor argues that only a portion of the respondent's claim, secured by a the present collateral, described as a 2013 Ford F-150 SuperCrew Cab XLT, is unprotected by the hanging paragraph because it resulted from financing for the negative-equity portion of the vehicle traded in at the time of the debtor's purchase of the present collateral.

The Ninth Circuit has held "that a creditor does not have a purchase money security interest in the "negative equity" of a vehicle traded in during a new vehicle purchase." *In re Penrod*, 611 F.3d 1158, 1164 (9th Cir. 2010). Because of this, the negative equity portion of an automobile lender's claim is not part of the purchase money security interest protected by the hanging paragraph.

The court adopts the pro-rata approach supported by the cases under which the percentage of the total amount originally financed that was secured by a PMSI is multiplied by the present balance of the debt owed to respondent on its claim. The product is the amount of the present claim protected by the hanging paragraph of § 1325(a). The amount of the present claim that exceeds this product is considered the "non-PMSI" portion of the claim which may be treated as unsecured so long as the value of the collateral does not support it.

The PMSI portion of the amount originally financed (the amount of financing used for the purchase of the present collateral) was \$39,600.48. This is 80.4% of the total amount financed. By inference, 19.6% is the non-PMSI amount that financed negative equity on the trade-in vehicle.

Multiplying 80.4% by the present claim amount of \$37,632.19 equals \$30,256.28, the PMSI portion of the present claim held by respondent. The non-PMSI portion equals \$7,375.91. This non-PMSI portion is not protected by the hanging paragraph, and, as a result, may be treated as an unsecured claim if it is uncollateralized. The debtor has offered evidence that the vehicle is worth \$24,729 by way of the debtor's lay opinion of the collateral's value, Maciel Decl. ¶ 2, ECF No. 30, which is less than the amount of the PMSI portion of the present claim. Because the vehicle is worth less than the PMSI-portion of the respondent's claim, the amount of the debt that exceeds the PMSI portion may be considered an unsecured claim. The court will issue an order valuing the collateral at \$30,256.28.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to value collateral consisting of a motor vehicle has been presented to the court. Having considered the motion, and the papers filed in support and opposition to the motion, and the reply,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2013 Ford F-150 SuperCrew Cab XLT has a value of \$30,256.28. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$30,256.28 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

40. 10-62939 -A-13 JEFFREY/BRANDI RAUEN MHM-3 MICHAEL MEYER/MV SCOTT LYONS/Atty. for dbt.	MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1 1-13-16 [73]
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Tentative Ruling

Nationstar Mortgage LLC's Response to this motion requests a continuance to allow it to procure a more in-depth and updated breakdown or ledger of payments received. This is necessary because Nationstar contends that the discrepancy between the amounts received during the plan period and the amount this creditor asserts it was owed may have been resolved by additional payments made this month. The trustee has also agreed to continue the matter for this purpose.

The matter will be continued to March 31, 2016, at 9:00 a.m. No later than March 23, 2016, a joint status report shall be filed, unless a stipulation resolving the matter has been filed before such time.

41. [15-10639](#)-A-13 RACHEL RIVERA
TCS-5
RACHEL RIVERA/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO MODIFY PLAN
1-11-16 [[86](#)]

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

42. [12-15942](#)-A-13 LINDA LANEY
MHM-3
MICHAEL MEYER/MV
STEPHEN LABIAK/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
1-6-16 [[40](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

43. [15-14543](#)-A-13 DAVID DOMINGO
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE
1-25-16 [[23](#)]

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The debtor has failed to appear at a scheduled § 341 meeting of creditors. See 11 U.S.C. §§ 341, 343. The debtor's payments to the trustee are not current under the proposed plan. § 1307(c)(4).

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

44. [14-11944](#)-A-13 FORTUNATO/KATHERINE MOTION TO DISMISS CASE
MHM-2 MORALES 1-7-16 [\[50\]](#)
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

For the reasons stated in the motion, cause exists under § 1307(c)(1)

and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2346.85.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$2346.85. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

45. [15-14945](#)-A-12 GREGER BRANNSTROM
AFW-1
FRANCESCHI TRUST/MV
NOEL KNIGHT/Atty. for dbt.
ANNA WELLS/Atty. for mv.
STIPULATION AND ORDER, ECF
NO. 64

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
1-4-16 [[10](#)]

Final Ruling

The motion has been continued to March 10, 2016, at 9:00 a.m. pursuant to stipulation and order.

46. [15-14945](#)-A-12 GREGER BRANNSTROM
AFW-1
GREGER BRANNSTROM/MV
NOEL KNIGHT/Atty. for dbt.
STIPULATION AND ORDER, ECF
NO. 64

CONTINUED COUNTER MOTION TO
ASSUME UNEXPIRED LEASE
1-20-16 [[36](#)]

Final Ruling

The motion has been continued to March 10, 2016, at 9:00 a.m. pursuant to stipulation and order.

47. [15-11846](#)-A-13 ARTHUR/KERRY BRICE
BDB-4
ARTHUR BRICE/MV

OBJECTION TO CLAIM OF U.S. BANK
NATIONAL ASSOCIATION, CLAIM
NUMBER 15
1-7-16 [[42](#)]

BENNY BARCO/Atty. for dbt.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Ordinarily, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). The only exceptions to this rule are tardily filed claims permitted under § 726(a) or under the Federal Rules of Bankruptcy Procedure. See *id.*; Fed. R. Bankr. P. 3002(c)(1)-(6).

Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

Further, Ninth Circuit precedent makes clear that the court does not have discretion under Rule 9006 to enlarge the time for filing a proof of claim except as provided in Rule 3002(c). See *In re Gardenhire*, 209 F.3d 1145, 1148-49 (9th Cir. 2000); *In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428, 1432-33 (9th Cir. 1990) (holding that court cannot enlarge time for filing a proof of claim unless one of the six grounds in Rule 3002(c) exists); see also Fed. R. Civ. P. 9006(b)(3). Equitable tolling cannot be applied to enlarge the time to file proofs of claim other than pursuant to the exceptions in Rule 3002(c). See *Gardenhire*, 209 F.3d at 1148.

Here, the responding party has not opposed the sustaining of the objection and asserted that any of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The responding party's claim was filed after the deadline for filing proofs of claim, so the claim will be disallowed. Fed. R. Bankr. P. 3002(c).

48. [15-11846](#)-A-13 ARTHUR/KERRY BRICE
DBD-1
ARTHUR BRICE/MV
BENNY BARCO/Atty. for dbt.

OBJECTION TO CLAIM OF BANK OF
AMERICA, N.A., CLAIM NUMBER 12
1-3-16 [[27](#)]

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Ordinarily, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). The only exceptions to this rule are tardily filed claims permitted under § 726(a) or under the Federal Rules of Bankruptcy Procedure. See *id.*; Fed. R. Bankr. P. 3002(c)(1)-(6).

Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

Further, Ninth Circuit precedent makes clear that the court does not have discretion under Rule 9006 to enlarge the time for filing a proof of claim except as provided in Rule 3002(c). See *In re Gardenhire*, 209 F.3d 1145, 1148-49 (9th Cir. 2000); *In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428, 1432-33 (9th Cir. 1990) (holding that court cannot enlarge time for filing a proof of claim unless one of the six grounds in Rule 3002(c) exists); see also Fed. R. Civ. P. 9006(b)(3). Equitable tolling cannot be applied to enlarge the time to file proofs of claim other than pursuant to the exceptions in Rule 3002(c). See *Gardenhire*, 209 F.3d at 1148.

Here, the responding party has not opposed the sustaining of the objection and asserted that any of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The responding party's claim was filed after the deadline for filing proofs of claim, so the claim will be disallowed. Fed. R. Bankr. P. 3002(c).

49. [15-11846](#)-A-13 ARTHUR/KERRY BRICE
DBD-2
ARTHUR BRICE/MV
BENNY BARCO/Atty. for dbt.

OBJECTION TO CLAIM OF BANK OF
AMERICA, N.A., CLAIM NUMBER 13
1-3-16 [[32](#)]

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Ordinarily, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). The only exceptions to this rule are tardily filed claims permitted under § 726(a) or under the Federal Rules of Bankruptcy Procedure. See *id.*; Fed. R. Bankr. P. 3002(c)(1)-(6).

Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

Further, Ninth Circuit precedent makes clear that the court does not have discretion under Rule 9006 to enlarge the time for filing a proof of claim except as provided in Rule 3002(c). See *In re Gardenhire*, 209 F.3d 1145, 1148-49 (9th Cir. 2000); *In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428, 1432-33 (9th Cir. 1990) (holding that court cannot enlarge time for filing a proof of claim unless one of the six grounds in Rule 3002(c) exists); see also Fed. R. Civ. P. 9006(b)(3). Equitable tolling cannot be applied to enlarge the time to file proofs of claim other than pursuant to the exceptions in Rule 3002(c). See *Gardenhire*, 209 F.3d at 1148.

Here, the responding party has not opposed the sustaining of the objection and asserted that any of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The responding party's claim was filed after the deadline for filing proofs of claim, so the claim will be disallowed. Fed. R. Bankr. P. 3002(c).

50. [15-11846](#)-A-13 ARTHUR/KERRY BRICE
DBD-3
ARTHUR BRICE/MV
BENNY BARCO/Atty. for dbt.

OBJECTION TO CLAIM OF BANK OF
AMERICA, N.A., CLAIM NUMBER 14
1-3-16 [[37](#)]

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Ordinarily, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). The only exceptions to this rule are tardily filed claims permitted under § 726(a) or under the Federal Rules of Bankruptcy Procedure. See *id.*; Fed. R. Bankr. P. 3002(c)(1)-(6).

Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

Further, Ninth Circuit precedent makes clear that the court does not have discretion under Rule 9006 to enlarge the time for filing a proof of claim except as provided in Rule 3002(c). See *In re Gardenhire*, 209 F.3d 1145, 1148-49 (9th Cir. 2000); *In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428, 1432-33 (9th Cir. 1990) (holding that court cannot enlarge time for filing a proof of claim unless one of the six grounds in Rule 3002(c) exists); see also Fed. R. Civ. P. 9006(b)(3). Equitable tolling cannot be applied to enlarge the time to file proofs of claim other than pursuant to the exceptions in Rule 3002(c). See *Gardenhire*, 209 F.3d at 1148.

Here, the responding party has not opposed the sustaining of the objection and asserted that any of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The responding party's claim was filed after the deadline for filing proofs of claim, so the claim will be disallowed. Fed. R. Bankr. P. 3002(c).

51. [15-13348](#)-A-13 CYRUSS/KRISTEN LAMARSNA MOTION TO CONFIRM PLAN
SL-2 1-14-16 [[48](#)]
CYRUSS LAMARSNA/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Pending

Order: Pending

The motion requests confirmation of the Chapter 13 plan in this case. 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). The Chapter 13 trustee opposes the motion, objecting to confirmation. But the moving party has not filed a reply to the opposition.

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

52. [12-18353](#)-A-13 LEROY CORDOVA MOTION BY BENJAMIN C. SHEIN TO
BCS-3 WITHDRAW AS ATTORNEY
1-25-16 [[49](#)]
BENJAMIN SHEIN/Atty. for dbt.

Final Ruling

Motion: Withdraw as Counsel of Record

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court

considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

MOTION TO WITHDRAW

An attorney may withdraw from a case when the client renders it unreasonably difficult for the member to perform the work for which he was retained. Cal. Rule of Prof. Conduct 3-700(C). Failure to communicate with counsel is one such ground. Counsel has made 10 efforts to contact the client over more than 30 days and the client has not responded. The motion will be granted.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Shein Law Group and Benjamin C. Shein's motion to withdraw as counsel of record has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted.

IT IS FURTHER ORDERED that Shein Law Group and Benjamin C. Shein shall comply with Rule of Professional Conduct 3-700(D) and all other applicable law pertaining to an attorney who terminates his employment.

53. 14-10855 -A-13 ELISEO OROZCO JDR-3 ELISEO OROZCO/MV JEFFREY ROWE/Atty. for dbt.	MOTION TO MODIFY PLAN 1-14-16 [78]
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Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden

of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

54. [15-11055](#)-A-13 CHERYL JACQUEZ
JRL-1
CHERYL JACQUEZ/MV
JERRY LOWE/Atty. for dbt.

OBJECTION TO CLAIM OF CAVALRY
SPV I, LLC, CLAIM NUMBER 1
1-27-16 [[60](#)]

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(2); no written opposition required

Disposition: Sustained

Order: Prepared by objecting party

NOTICE DEFICIENCIES

The debtor has objected using the notice procedure of LBR 9014-1(f)(1) (requiring opposition in writing 14 days in advance of the hearing date). First, this is not the correct local rule though it is analogous. LBR 3007-1(b) governs claims objections. Second, the claim objection was filed 29 days before the hearing date, so no written opposition can be required 14 days in advance of the hearing under LBR 3007-1(b)(1)-44 days' notice would have been necessary for this notice procedure. The court will waive this defect but treat the matter as noticed under LBR 3007-1(b)(2). Third, FRBP 3007 and LBR 3007-1(b)(2) require at least 30 days' notice. Here, 29 days' notice was given, which the court will treat as sufficient, though it may not do so in the future.

MERITS OF THE OBJECTION

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative

defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1).

The objection's well-pleaded facts show that the debtor has not made any payments on the loan held by the responding party since approximately September 19, 2008. Thus, no payment has been made within the last four years before the filing of the petition on March 20, 2015.

55. [15-11055](#)-A-13 CHERYL JACQUEZ
JRL-2
CHERYL JACQUEZ/MV

OBJECTION TO CLAIM OF MIDLAND
CREDIT MANAGEMENT INC., CLAIM
NUMBER 2
1-27-16 [[64](#)]

JERRY LOWE/Atty. for dbt.

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(2); no written opposition required

Disposition: Sustained

Order: Prepared by objecting party

NOTICE DEFICIENCIES

The debtor has objected using the notice procedure of LBR 9014-1(f)(1) (requiring opposition in writing 14 days in advance of the hearing date). First, this is not the correct local rule though it is analogous. LBR 3007-1(b) governs claims objections. Second, the claim objection was filed 29 days before the hearing date, so no written opposition can be required 14 days in advance of the hearing under LBR 3007-1(b)(1)-44 days' notice would have been necessary for this notice procedure. The court will waive this defect but treat the matter as noticed under LBR 3007-1(b)(2). Third, FRBP 3007 and LBR 3007-1(b)(2) require at least 30 days' notice. Here, 29 days' notice was given, which the court will treat as sufficient, though it may not do so in the future.

MERITS OF THE OBJECTION

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1).

The objection's well-pleaded facts show that the debtor has not made any payments on the loan held by the responding party since approximately August 9, 2005. Thus, no payment has been made within the last four years before the filing of the petition on March 20, 2015.

56. [15-11055](#)-A-13 CHERYL JACQUEZ
JRL-3
CHERYL JACQUEZ/MV

OBJECTION TO CLAIM OF MIDLAND
CREDIT MANAGEMENT INC., CLAIM
NUMBER 3
1-27-16 [[68](#)]

JERRY LOWE/Atty. for dbt.

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(2); no written opposition required

Disposition: Sustained

Order: Prepared by objecting party

NOTICE DEFICIENCIES

The debtor has objected using the notice procedure of LBR 9014-1(f)(1) (requiring opposition in writing 14 days in advance of the hearing date). First, this is not the correct local rule though it is analogous. LBR 3007-1(b) governs claims objections. Second, the claim objection was filed 29 days before the hearing date, so no written opposition can be required 14 days in advance of the hearing under LBR 3007-1(b)(1)-44 days' notice would have been necessary for this notice procedure. The court will waive this defect but treat the matter as noticed under LBR 3007-1(b)(2). Third, FRBP 3007 and LBR 3007-1(b)(2) require at least 30 days' notice. Here, 29 days' notice was given, which the court will treat as sufficient, though it may not do so in the future.

MERITS OF THE OBJECTION

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1).

The objection's well-pleaded facts show that the debtor has not made any payments on the loan held by the responding party since approximately August 2, 2006. Thus, no payment has been made within the last four years before the filing of the petition on March 20, 2015.

57. [15-11055](#)-A-13 CHERYL JACQUEZ
JRL-4
CHERYL JACQUEZ/MV
JERRY LOWE/Atty. for dbt.

OBJECTION TO CLAIM OF LVNV
FUNDING, LLC, CLAIM NUMBER 5
1-27-16 [\[72\]](#)

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(2); no written opposition required

Disposition: Sustained

Order: Prepared by objecting party

NOTICE DEFICIENCIES

The debtor has objected using the notice procedure of LBR 9014-1(f)(1) (requiring opposition in writing 14 days in advance of the hearing date). First, this is not the correct local rule though it is analogous. LBR 3007-1(b) governs claims objections. Second, the claim objection was filed 29 days before the hearing date, so no written opposition can be required 14 days in advance of the hearing under LBR 3007-1(b)(1)—44 days' notice would have been necessary for this notice procedure. The court will waive this defect but treat the matter as noticed under LBR 3007-1(b)(2). Third, FRBP 3007 and LBR 3007-1(b)(2) require at least 30 days' notice. Here, 29 days' notice was given, which the court will treat as sufficient, though it may not do so in the future.

MERITS OF THE OBJECTION

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1).

The objection's well-pleaded facts show that the debtor has not made any payments on the loan held by the responding party since approximately September 11, 2005. Thus, no payment has been made within the last four years before the filing of the petition on March 20, 2015.

58. [15-11055](#)-A-13 CHERYL JACQUEZ
JRL-5
CHERYL JACQUEZ/MV

OBJECTION TO CLAIM OF ACCLAIM
CREDIT TECHNOLOGIES, CLAIM
NUMBER 7
1-27-16 [[76](#)]

JERRY LOWE/Atty. for dbt.

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(2); no written opposition required

Disposition: Sustained

Order: Prepared by objecting party

NOTICE DEFICIENCIES

The debtor has objected using the notice procedure of LBR 9014-1(f)(1) (requiring opposition in writing 14 days in advance of the hearing date). First, this is not the correct local rule though it is analogous. LBR 3007-1(b) governs claims objections. Second, the

claim objection was filed 29 days before the hearing date, so no written opposition can be required 14 days in advance of the hearing under LBR 3007-1(b) (1)-44 days' notice would have been necessary for this notice procedure. The court will waive this defect but treat the matter as noticed under LBR 3007-1(b) (2). Third, FRBP 3007 and LBR 3007-1(b) (2) require at least 30 days' notice. Here, 29 days' notice was given, which the court will treat as sufficient, though it may not do so in the future.

MERITS OF THE OBJECTION

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor has stated facts showing that the debtor is not liable for the claim. The debt claimed by the claimant arose after the debtor had closed her account with the original creditor.

59. [15-11055](#)-A-13 CHERYL JACQUEZ
JRL-6
CHERYL JACQUEZ/MV
JERRY LOWE/Atty. for dbt. OBJECTION TO CLAIM OF FRANCHISE
TAX BOARD, CLAIM NUMBER 8
1-27-16 [[80](#)]

Final Ruling

The matter has been continued to March 31, 2016, at 9:00 a.m. by stipulation and order.

60. [15-11055](#)-A-13 CHERYL JACQUEZ
JRL-7
CHERYL JACQUEZ/MV
JERRY LOWE/Atty. for dbt. OBJECTION TO CLAIM OF MARK A.
ZIMMERMAN, CLAIM NUMBER 9
1-27-16 [[84](#)]

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b) (2); no written opposition required

Disposition: Sustained

Order: Prepared by objecting party

NOTICE DEFICIENCIES

The debtor has objected using the notice procedure of LBR 9014-1(f) (1) (requiring opposition in writing 14 days in advance of the hearing date). First, this is not the correct local rule though it is analogous. LBR 3007-1(b) governs claims objections. Second, the claim objection was filed 29 days before the hearing date, so no written opposition can be required 14 days in advance of the hearing under LBR 3007-1(b) (1)-44 days' notice would have been necessary for this notice procedure. The court will waive this defect but treat the

matter as noticed under LBR 3007-1(b)(2). Third, FRBP 3007 and LBR 3007-1(b)(2) require at least 30 days' notice. Here, 29 days' notice was given, which the court will treat as sufficient, though it may not do so in the future.

MERITS OF THE OBJECTION

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor has stated facts showing that the debtor is not liable for the claim pursuant to Cal. Bus. & Prof. Code § 6148(a). The attorney did not have a written fee agreement for the services provided and for which claim no. 9 seeks recovery. In addition, the client did not authorize such services performed to convert the case, despite any lack of substitution filed at the time the services converting the case, and any services thereafter, were performed.

61. [11-62956](#)-A-12 MICHAEL SMITH AND SANDRA MOTION FOR ENTRY OF DISCHARGE
FW-7 ESTRADA-SMITH 1-27-16 [[79](#)]
MICHAEL SMITH/MV
PETER FEAR/Atty. for dbt.

Final Ruling

Motion: For Entry of Chapter 12 Discharge

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the movant and submitted no later than March 2, 2016 to allow the court to comply with section 1228(f)'s time limitations

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

All payments under the debtors' plan have been completed. For the reasons stated in the motion, the debtors are eligible for a chapter 12 discharge.

62. [15-14356](#)-A-13 ARMANDO MARTINEZ
TLC-1
ARMANDO MARTINEZ/MV
JESSICA DORN/Atty. for dbt.

MOTION TO CONFIRM PLAN
1-6-16 [[26](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

63. [16-10359](#)-A-13 MATTHEW/KIMBERLI CARROLL
SL-1
MATTHEW CARROLL/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
2-11-16 [[7](#)]

Tentative Ruling

Motion: Extend the Automatic Stay

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the

filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

64. [14-12960](#)-A-13 FRANCISCA MATA
MHM-2
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
1-7-16 [[30](#)]

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$1340.

The debtor admits this delinquency, asserting that debtor is getting funds together to cure the delinquency and be current by the hearing. The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$1340. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

65. [14-13560](#)-A-13 GUADALUPE MEDINA MOTION TO DISMISS CASE
MHM-1 1-7-16 [[26](#)]
MICHAEL MEYER/MV
MARK ZIMMERMAN/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

66. [13-15961](#)-A-13 ROBERT/HOLLY WOODS MOTION TO DISMISS CASE
MHM-2 1-7-16 [[90](#)]
MICHAEL MEYER/MV
JOSEPH ARNOLD/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

67. [15-14161](#)-A-13 ARTHUR/ERICA ALLEN ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-29-16 [[25](#)]
JERRY LOWE/Atty. for dbt.

Final Ruling

The fee paid in full, the order to show cause is discharged and the case will remain pending.

68. [12-11162](#)-A-13 DEMETRIO AGUILAR AND JAMI MOTION TO DISMISS CASE
MHM-1 JENSEN-AGUILAR 1-6-16 [[47](#)]
MICHAEL MEYER/MV
GARY HUSS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

69. [12-19562](#)-A-13 BRIAN/KERI MITCHELL MOTION TO DISMISS CASE
MHM-2 1-6-16 [[44](#)]
MICHAEL MEYER/MV
GEOFFREY ADALIAN/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

70. [10-64563](#)-A-13 LOREN/STACIE AFFONSO CONTINUED MOTION TO DISMISS
MHM-2 CASE
MICHAEL MEYER/MV 12-4-15 [[48](#)]
CHRISTIE LEE/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

71. [15-14067](#)-A-13 WARREN/MICHELLE BOND OBJECTION TO CONFIRMATION OF
MHM-2 PLAN BY TRUSTEE MICHAEL H.
MEYER
2-1-16 [[35](#)]
TIMOTHY SPRINGER/Atty. for dbt.

No tentative ruling.

72. [15-11468](#)-A-7 BRIAN/NICHOLE WALL MOTION TO DISMISS CASE
MHM-1 1-8-16 [[25](#)]
MICHAEL MEYER/MV
GEOFFREY ADALIAN/Atty. for dbt.
CONVERTED 1/26/16, WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

73. [15-12669](#)-A-13 BECKY BARNES MOTION TO DISMISS CASE
MHM-1 1-8-16 [[36](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

74. [12-10475](#)-A-13 JAMES/SEASON TRIMBLE MOTION TO DISMISS CASE
MHM-3 1-6-16 [[59](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

75. [15-11376](#)-A-13 SOFIA REYNOZO CONTINUED OBJECTION TO CLAIM OF
GEG-2 NICHOLAS FLORES, CLAIM NUMBER 3
SOFIA REYNOZO/MV 6-30-15 [[39](#)]
GLEN GATES/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

The court will drop the objection as moot given that the parties have settled their controversy in this case, which settlement includes a provision for Flores's claim to be withdrawn.

76. [15-11376](#)-A-13 SOFIA REYNOZO CONTINUED MOTION TO COMPROMISE
GEG-3 CONTROVERSY/APPROVE SETTLEMENT
SOFIA REYNOZO/MV AGREEMENT WITH NICHOLAS FLORES
1-14-16 [[69](#)]
GLEN GATES/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Order prepared by movant and approved and signed by the trustee

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the

litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The debtor requests approval of a compromise that settles a dispute between creditor Nicholas Flores and movant. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 71. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as Exhibit 1 and filed at docket no. 71.

77. [15-11376](#)-A-13 SOFIA REYNOZO
MHM-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
7-31-15 [[45](#)]

GLEN GATES/Atty. for dbt.

Tentative Ruling

The court will overrule the objection as moot given the court's approval of a compromise between a creditor and the debtor in this case that requires dismissal of this case.

78. [15-13980](#)-A-13 HAROLD THORNTON
MHM-1
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
1-25-16 [[37](#)]

No tentative ruling.

79. [11-14481](#)-A-13 PRIMITIVO/ALMA CRUZ
MHM-1
MICHAEL MEYER/MV
THOMAS ARMSTRONG/Atty. for dbt.
RESPONSIVE PLEADING

RESCHEDULED MOTION TO DISMISS
CASE
12-9-15 [[56](#)]

No tentative ruling.

80. [11-14481](#)-A-13 PRIMITIVO/ALMA CRUZ
THA-3
PRIMITIVO CRUZ/MV

MOTION FOR HARDSHIP DISCHARGE
AND/OR MOTION TO ESTABLISH AN
ORDER FIXING A TIME IN WHICH TO
FILE COMPLAINTS TO DETERMINE
DISCHARGEABILITY OF DEBTS
1-26-16 [[68](#)]

THOMAS ARMSTRONG/Atty. for dbt.

No tentative ruling.

81. [15-13381](#)-A-13 JOSEPH DIAZ
MR-3
JOSEPH DIAZ/MV
MATIN RAJABOV/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
1-14-16 [[62](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Pending

Order: Pending

The motion requests confirmation of the Chapter 13 plan in this case.
11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-
1(d)(1). Creditor WDTD, LLC opposes the motion, objecting to
confirmation. But the moving party has not filed a reply to the
opposition.

CONFIRMATION

Without the benefit of a reply, the court cannot determine whether the
grounds for the creditor's opposition are disputed or undisputed. As
a result, the court does not consider the matter to be ripe for a

decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the creditor's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

75 DAY ORDER

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

82. [14-15882](#)-A-13 DELIA GALLARDO
JDR-3
DELIA GALLARDO/MV
JEFFREY ROWE/Atty. for dbt.

MOTION TO MODIFY PLAN
1-14-16 [[62](#)]

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

83. [12-17783](#)-A-13 EDWARD/THERESA AGUALLO MOTION TO DISMISS CASE
MHM-3 1-6-16 [[66](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

84. [15-13086](#)-A-13 CHARLES KEELE CONTINUED OBJECTION TO
RWR-1 CONFIRMATION OF PLAN BY TULARE
TULARE COUNTY TAX COLLECTOR/MV COUNTY TAX COLLECTOR
9-22-15 [[22](#)]
SCOTT LYONS/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.

No tentative ruling.

85. [15-13086](#)-A-13 CHARLES KEELE OBJECTION TO CLAIM OF TULARE
SL-1 COUNTY TAX COLLECTOR, CLAIM
CHARLES KEELE/MV NUMBER 6-1
1-8-16 [[39](#)]
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

86. [15-11987](#)-A-13 JESUS/DIANEY MOSQUEDA MOTION TO CONFIRM PLAN
TOG-5 1-11-16 [[51](#)]
JESUS MOSQUEDA/MV
THOMAS GILLIS/Atty. for dbt.

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

87. [14-15690](#)-A-13 DONALD/MARIA LUISA SMITH MOTION TO DISMISS CASE
MHM-2 1-8-16 [[32](#)]
MICHAEL MEYER/MV
GEORGE LOGAN/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$1970.33.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$1970.33. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

88. [15-13890](#)-A-13 REBECCA STANLEY-HARRIS
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
1-28-16 [[21](#)]

PETER BUNTING/Atty. for dbt.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Sustained

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

FEASIBILITY

The court takes judicial notice of the debtor's schedules and their contents. Fed. R. Evid. 201(b), (c)(1). In the absence of an authenticity objection, the court finds that the document Schedule J on its docket was completed and filed by the debtor in this case.

Schedule J shows monthly net income of -\$367.40. The plan payment is \$1000. The plan is not feasible. See 11 U.S.C. § 1325(a)(6). The objection will be sustained. Confirmation will be denied.

75-DAY ORDER

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

The chapter 13 trustee's objection to confirmation has been presented to the court. Having reviewed the objection and the plan, and Schedule J filed by the debtor on the court's docket, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the objection is sustained. Confirmation is denied without prejudice.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

89. [15-14092](#)-A-13 DAVID/ROSALINA FERRER
PBB-3
DAVID FERRER/MV

MOTION TO VALUE COLLATERAL OF
CALIFORNIA EMPLOYMENT
DEVELOPMENT DEPARTMENT
1-22-16 [[38](#)]

PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

VALUATION OF COLLATERAL

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 2699 Rall Ave., Clovis, CA.

The court values the collateral at \$250,000. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil

minutes for the hearing.

The debtor's motion to value real property collateral has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The real property collateral located at 2699 Rall Ave., Clovis, CA, has a value of \$250,000. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

90. [13-14594](#)-A-13 JUANITA MARTINEZ MOTION TO DISMISS CASE
MHM-3 1-7-16 [[56](#)]
MICHAEL MEYER/MV
JOEL WINTER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

91. [12-11896](#)-A-13 MYRNA GOMEZ MOTION TO DISMISS CASE
MHM-4 1-6-16 [[73](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

92. [14-11696](#)-A-13 JOHN/LEA MCDERMOTT CONTINUED MOTION TO DISMISS
MHM-3 CASE
MICHAEL MEYER/MV 11-5-15 [[47](#)]
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

93. [14-11696](#)-A-13 JOHN/LEA MCDERMOTT MOTION TO MODIFY PLAN
TCS-2 1-12-16 [[52](#)]
JOHN MCDERMOTT/MV
TIMOTHY SPRINGER/Atty. for dbt.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

94. [15-14296](#)-A-13 LAO CHA MOTION TO DISMISS CASE
MHM-1 1-25-16 [[37](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

95. [14-13899](#)-A-13 MIGUEL FLOREZ MOTION TO DISMISS CASE
MHM-4 1-7-16 [[76](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$932.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$932. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.